

Testimony of Senator Patrick "Pat" Connell,

a Certified Forester

to

The Montana Water Policy Interim Committee 2 Sept 2015 at Helena, MT

Mr Chairman, Committee members, this presentation is in part, a follow up to a discussion that this Committee held with Forest Service representatives two years ago. At that time, I had presented information to the Committee that our State's headwaters were systematically being seriously, and negatively impacted by wildfires, which I contended, and still assert may be considered a violation of our State Water Laws due to their adverse effects on downstream, Senior Water Right users.

To recap, and bring the Committee up to date, I used as an example the Saddle Fire, which was lightning caused on the Salmon-Challis National Forest, *in Idaho*, on August 10, 2011 at 2 PM. That forest chose to not initiate active suppression efforts, so that the wildfire began to blow up starting 10 days later, and by month's end, was over 26,000 acres, much of it in the West Fork of the Bitterroot, which happens to be my then House, and now Senate District.

Initially, my concern focused on the downstream effects on this "let burn" fire had on Painted Rocks Reservoir, a critical component for both fisheries and agriculture in Ravalli County. I will not belabor the details, but I urge the Committee to review my presentation before the 2012 national convention of the Society of American Foresters. As I documented in my presentation, initially, the Forest Service attempted the excuse the impact of the fire as the result of "...100 years of fire suppression". While this excuse might arguably

be applicable for low elevation Ponderosa Pine forests in the region, attributing that excuse to subalpine Lodgepole timber stands is bunk. Nearly 50 years ago within an internal agency report the Timber staff of the Lolo National Forest warned of future insect and wildfire problems from the maturing 40 year old “thicket” of Lodgepole regeneration caused as the aftermath of the 1910 fire. This prediction was spot on, as initially evidenced by an early outbreak in the early 70s of Mountain Pine beetle in the Thompson River drainage.

Finally, over the last three years a profound attitude shift began to change, under the leadership of Regional Forester (now retired) Faye Krueger. Realization of the wildfire threats started to surface slowly in the agency. In fact, the very Saddle Fire’s burn intensity and rate of spread were analyzed by the agency’s Fire Science folks, and came, scientifically, to the same conclusion that a bunch of old dirt foresters such as myself empirically have recognized: a forested area with significant percentages of dead standing will burn hotter, and spread faster.

So Montana has a gargantuan problem of headwater drainages being overstocked with overmature, and dead standing timber. Do-nothing advocates, such as George Wuerthner in a *Missoulian* column just a few days ago promote “...wildfires to assume their important ecological role in rejuvenating forest ecosystems”. I conclude that to mean “Let Burn!” Just like courtroom litigators who never want the WHOLE TRUTH, ( just their part of the truth) such advocacy ignores incredible societal impacts on air, water, and the economy. As society has chosen to push back against natural occurring

problems like Smallpox, Polio, and Ebola, Society now has overwhelmingly rejected approval of unrestrained wildfires and their smoke.

So what has occurred in the last three years to offer Montanans hope in the future? A profound paradigm change has occurred at the State level: To begin, Senator Hamlett and I, over the last two sessions successfully sponsored legislation to authorize the Attorney General's intervention to support federal vegetative management projects ( i.e.: Colt Summit, 10 mile and others ), and to authorize DNRC personnel to actively engage on federal projects in critical watersheds ( 10 Mile ). On the federal level, the passage of the Farm Bill nearly a year ago allowed the Governor to declare nearly 5 million acres in immediate and critical danger for the Forest Service to focus management efforts upon.

The agency now for some years dramatically suffered in the appropriations process due to "sequestration" ,its arbitrary flatline reduction of budgets, and now, for the costs of suppressing wildfires, that, this fiscal year, will exceed 50% of the agency's \$6 billion budget. Obviously, the agency's overriding problem is sufficient funding to implement on-the-ground projects that deal with overstocking timber densities. Here, now is where the State Water Compact can engage. The risk of burning headwater after headwater drainage is 100%. My assertion is that the Agency has the landowner obligation under terms of the Water Compact to maintain water volume, quality and *Timing of Flow* for the downstream Senior Water Right users. Hydrologic impacts of watershed crown cover ( or lack thereof) are well documented in scientific studies. Think of the economic impact of one extra week of late season irrigation to our State's Ag industry! I presented this position to Deputy

Secretary of Agriculture Butch Blazer in a trip to DC in October 2013, to the Region One Leadership Team last November and again this past June back in DC to Associate Deputy Chief Emilee Blount and her leadership team. I maintain that Montana should expect, and must demand full funding for projects in Montana to address the fire risks I've outlined, to do less will cause significant financial damage to downstream water users. No other State has such a Compact with the agency, yet, to date, Region One has yet to acknowledged its obligation under State Law as an argument for expanded budget requirements or as part of the "Purpose and Need" within EIS documents. It seems that agency folks have a rather strong dislike for my assertion that by signing the Compact, the agency has indeed subordinated itself of Montana's State Water Laws and court. The contention that abiding by the federal Clean Water Act isn't a "get out of jail card" for the agency. That federal Law deals solely with water quality. Montana's State prior-appropriations doctrine deals with the adjudication of water, and treats the agency like any other Water Right user.

Is the issue of water political? You betcha, but not necessarily relative to Party! The EPA WOTUS proposal is earning strong pushback from many states. The same holds true here in our state. While there are folks strongly opposed to a proposed mine in Meagher County that has a *possibility* of impacting the Smith River several miles downstream ( yet which development plans met with the DEQ approval), there is not a whisper about the *guaranteed* watershed damage to Tenderfoot, Sheep or Moose Creeks when that area, with roughly 90% of its lodgepole, which is dead standing burns. Likewise, efforts by the Forest Service to address fires risk and over stocking of stand densities of Hyalite watershed out of Bozeman ( the city's municipal

water source )currently face litigation, as well as only address a mere fraction of the entire watershed. When that drainage does burn, and devastates the municipal water supply, it will be the taxpayers of Bozeman that will be left holding the bag, spring flooding and little late season water availability.

As bad as the fire season is this year, Montana still faces even more numerous near million acre fires. Montana can be a willing partner to face and mitigate these problems with the Forest Service, or the federal agency can face the wrath of this State *in a State Court* for damages to all other users of Water Rights by their inability or unwillingness to act. The federal lands are the asset of every US citizen, not just Montanans. Let all the US taxpayers pony up to the management obligation that the Forest Service holds.

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